

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1      RCFE Personal Rights and Miscellaneous

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held August 30, 2017, as follows:

Office Building # 8  
744 P Street, Room 103  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on August 30, 2017.

Following the public hearing, CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information>. Additionally, all the information, which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file), is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below:

CONTACT: Office of Regulations Development  
California Department of Social Services  
744 P Street, MS 8-4-192  
Sacramento, California 95814  
TELEPHONE: (916) 657-2586 FACSIMILE: (916) 654-3286  
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## CHAPTERS

Residential Care Facilities for the Elderly (RCFE) Title 22, Division 6, Chapter 8.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Residential Care Facilities for the Elderly (RCFE) Act in existing law provides for the licensure and regulation of RCFEs. RCFEs are regarded by statute as a housing arrangement chosen voluntarily by people who are 60 years of age or over or their authorized representatives where varying levels and intensities of care and supervision, protective supervision or personal care are provided based on the varying needs of a person pursuant to Section 1569.2 of the Health and Safety Code. Also pursuant to this statute, care in RCFEs may be provided to persons who are under 60 years of age with compatible needs as specified in Section 1569.316.

Previous existing law has not enacted personal rights for residents in RCFEs. Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014) became effective January 1, 2015 and:

- 1) Enacted a "bill of rights" for residents in privately operated RCFEs in a new Article 2.5 in the Residential Care Facilities for the Elderly Act.
- 2) Required licensees to post, in a prominent location, a copy of the bill of rights in English and, if residents in a facility primarily read in another language, in any other language that can be read by 5% or more of the residents in the facility.

Senate Bill (SB) 211 (Chapter 409, Statutes of 2003) became effective January 1, 2004 and required licensees to afford residents the right to contact the Department and other entities in regard to complaints.

SB 895 (Chapter 704, Statutes of 2014) became effective January 1, 2015 and required the Department to design, or cause to be designed, a poster that contains information on the appropriate reporting agency in case of a complaint or emergency for posting in RCFE.

Existing regulations in the California Code of Regulations (CCR), Title 22, Division 6, Chapter 8, RCFE section 87468 established that each resident in RCFEs have 18 personal rights, which include such concepts as the right to be accorded dignity in his or her personal relationships with staff, residents, and other persons and the right to be informed by the licensee of provisions of law regarding complaints and of procedures to confidentially register complaints, including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency. These regulations also established the requirement that licensees inform residents of their personal rights.

These proposed regulations amend the CCR, Title 22, section 87468 to incorporate statutory resident rights for residents in privately operated RCFEs into existing regulatory personal rights. They also require that: 1) residents in publicly operated RCFEs continue to be afforded the personal rights in existing regulations; 2) residents in all RCFEs be afforded the right to make complaints to specified agencies; 3) regardless of number of residents, all licensees post personal rights and complaint information; 4) in RCFEs where 5% or more of residents primarily read another language, personal rights and complaint information also be posted in other languages read by residents; and 5) all licensees keep an accurate and confidential list of all residents and languages primarily read by residents and provide this list to the Department upon request.

These proposed regulations also make miscellaneous changes to regulations that do not address resident personal rights. One of these changes is needed to amend the timeframe for notice of sale of a RCFE as a result of changes to Health and Safety Code section 1569.191, which reduced the timeframe for this notice from 60 days to 30 days. Other changes are needed to clarify requirements for medication storage, repeal an incorrect subsection reference in regulations, and adopt unstageable wounds as a prohibited health condition.

This regulatory action will benefit residents receiving care in privately operated RCFEs by according them statutory personal rights that are consistent with the patient bill of rights implemented by the California Advocates for Nursing Home Reform, California Department of Public Health, and Medicare. Residents in both privately operated and publicly operated RCFEs will continue to be protected by personal rights in existing regulations. This action will also ensure that residents, including those who read primarily in other languages, in all RCFEs have equal access to and awareness of personal rights and complaint information. In addition, it will assist all licensees in ensuring compliance in providing care to residents.

The Department finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting AB 2171, AB 878, SB 895 and SB 211, and with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that, other than mentioned above, these are the only regulations that concern personal rights and complaints for Residential Care Facilities for the Elderly in California.

***Form Incorporated by Reference***

Residential Care Facility for the Elderly (RCFE) Complaint Poster (PUB 475, 1/15)

***Post-hearing (July 27, 2016) change summary:***

The regulations were noticed on June 10, 2016 and a public hearing held on July 27, 2016. Testimony was received during the 45-day public comment period ending at 5:00 p.m., July 27, 2016. The CDSS considered the testimony and changes were made to the proposed regulations. These changes include:

- 1) Amending Section 87101 by adding definitions for "deep tissue pressure injury," "pressure injury" and "unstageable pressure injury" in Sections 87101(d)(2), (p)(3) and (u)(3) respectively. The definition for "healing wounds" in Section 87101(h)(1) is amended to replace "dermal ulcers" with "pressure injuries." These definitions are consistent with terminology used by the National Pressure Ulcer Advisory Panel (NPUAP). The definition for "healing wounds" is also amended to make clear that these wounds may be diagnosed and treated by a physician or an appropriately skilled professional.
- 2) Amending Section 87109(b) to clarify that notification by the licensee applies to any of the events, i.e., sale or transfer of the property or business or a bona fide offer is made that is expected to result in the pending sale or transfer of a facility, as specified in statute.
- 3) Amending Section 87468(a)(1)(D) to change phrasing from "To confidentially contact" to "To contact confidentially" to clarify that "confidentially" applies to the confidential receipt and handling of complaints by the California Department of Social Services Community Care Licensing Division.
- 4) Amending Sections 87610(a)(2), 87615(a)(1), 87631(a)(3) and (a)(3)(A) to replace references to "pressure sore (dermal ulcer)" with "pressure injury" or "pressure injuries or deep tissue pressure injuries" consistent with terminology used by the NPUAP.
- 5) Amending Section 87615(a)(2) to replace "wounds" with "pressure injuries or deep tissue pressure injuries" since both may be unstageable. Section 87615(a)(3) is amended to replace "care" with "tubes" to make clear that "tubes" describe health conditions that require care. Section 87615(a)(5) is amended to spell out "staphylococcus aureus" and include it with "staph" since both describe the same type of health condition and either may be more familiar to licensees.
- 6) Amending Sections 87631(a)(3) and (a)(3)(A) to make clear that a pressure injury may be diagnosed and treated by a physician or an appropriately skilled professional.
- 7) Adding to Documents Relied upon:
  - a) National Pressure Ulcer Advisory Panel (NPUAP) Press Release on change in terminology from pressure ulcer to pressure injury and updates the stages of pressure injury, dated April 13, 2016.
  - b) National Pressure Ulcer Advisory Panel (NPUAP), European Pressure Ulcer Advisory Panel (EPUAP) and Japanese Society of Pressure Ulcers (JSPU), et al., as sponsored by Gaymar Industries, Inc. (now Stryker) on Shear: A contributory factor in pressure ulceration slide set on NPUAP website September 21, 2016.
  - c) WoundSource article on Identifying Types of Tissues Found in Pressure Ulcers, dated November 20, 2014.

## COST ESTIMATE

1. Costs or Savings to State Agencies: Community Care Licensing Division received one Associate Governmental Program Analyst position via AB 2171 (Chapter 702, Statutes of 2014) for purposes of writing these regulations. No other costs or savings effect on state agencies.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

## LOCAL MANDATE STATEMENT:

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

AB 2171 expands the scope of a crime. SB 211 creates a new crime. Both impose a state-mandated local program. However, neither of these laws require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

## STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Expanded personal rights regulations to implement AB 2171 would apply to privately operated RCFEs. Existing regulatory personal rights would continue to apply to both privately and publicly operated RCFEs. A modified regulation affording residents the personal right to make complaints to specified agencies would apply to all RCFEs, regardless of whether they are privately operated or publicly operated. Regardless of number of residents, all licensees would be required to post personal rights and complaint information, and post this information in other languages when five percent or more of residents primarily read in another language.

This determination was made based on that there will be some administrative costs to licensees of all RCFEs as a result of statutory requirements enacted by AB 2171, SB 211 and SB 895. Licensees would need to update admission agreements as they relate to resident personal rights and facility procedures as they relate to posting these rights and complaint information in other languages read by five percent or more of residents in a facility. Licensees would also need to develop and implement a method for collecting information from residents on the language they primarily read and compile this information into a single list that is kept accurate and current. The CDSS

anticipates that this list will result in negligible cost to licensees since existing regulations in the CCR, Title 22, section 87508 require a register of residents, which may be expanded to address languages read by residents. In addition, licensees would need to update the posted resident personal rights and/or complaint information whenever the composition of languages primarily read by residents changes based on the five percent rule.

Further, miscellaneous changes to regulations that do not address resident personal rights will require licensees of RCFEs to not accept or retain residents with unstageable wounds. However, this and other miscellaneous changes do not have any statewide adverse economic impact directly affecting businesses or private persons in California.

#### STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The proposed regulations in regard to personal rights would apply to privately operated RCFEs, while regulations in regard to posting personal rights and complaint information would apply to all RCFEs. The CDSS is aware that there will be some administrative cost impacts that a representative private person or business would incur in reasonable compliance with the statutory requirements enacted by AB 2171, SB 211 and SB 895. These administrative cost impacts are described under "Statement of Significant Adverse Economic Impact on Business" above.

#### SMALL BUSINESS IMPACT STATEMENT

The proposed regulations would apply to all RCFEs. RCFEs with a capacity of six or less comprise approximately 80 percent of RCFEs licensed by CDSS. The CDSS has made an initial determination that there will be some administrative cost impacts to small businesses as a result of statutory requirements enacted by AB 2171, SB 211 and SB 895. These administrative cost impacts are described under "Statement of Significant Adverse Economic Impact on Business" above.

#### STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The proposed amendments to regulations will neither create nor eliminate jobs in the State of California, nor result in the creation of new business, or expansion or elimination of existing businesses within the State of California. The benefits to the health and welfare of California residents within the RCFE system are as a result of the passage of AB 2171 and SB 211, which modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468 since 2008. Further benefits are as a result of the passage of SB 895, which requires that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of miscellaneous changes in law or standards of care either modify, or are consistent with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008. For these reasons, CDSS has determined that the proposed regulations will not have an impact on worker safety, the state's environment, or the creation or elimination of jobs, nor the creation of new business, or the expansion or elimination of existing businesses in the State of California.

#### STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

#### STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS did not consider any alternatives because no reasonable alternative has been presented for review.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

#### AUTHORITY AND REFERENCE CITATIONS

Authority: 1569.30, Health and Safety Code. References: Sections 1569.1, 1569.191, 1569.265, 1569.267, 1569.269, 1569.31, 1569.312, 1569.33, 1569.885 and 1569.889, Health and Safety Code; and Section 5350, Welfare and Institutions Code.

#### CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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